tain company which the associates represented as duly incorporated. A Massachusetts statute provided that no corporation should come into existence without the certificate of the Secretary of the Commonwealth, issued on the filing of its organization papers, which certificate should have the effect of a special charter. When the goods were delivered, the company had not attempted to comply with the statute, though it did so the following day. *Held*, that the plaintiff can replevy the goods. *Whiting & Sons Co.* v. *Barton*, 90 N. E. 528 (Mass.).

Questions as to collateral attack upon incorporation usually have arisen in this country where there has been partial, but not complete, compliance with the provisions of a general incorporation law. *Callender* v. *Painesville & Hudson R. Co.*, 11 Oh. St. 516. But under the Massachusetts statute this question should seldom arise. See MASS. ACTS OF 1903, c. 437, § 12. Yet the case of a naked assumption of the corporate privilege, that is, an assumption where there has been no attempt to comply with the provisions of any law authorizing incorporation, sometimes arises, as in the principal case. Under such circumstances, Massachusetts applies the common-law rule. No title passed to the corporation when the goods were delivered, for the supposed buyer did not then exist. *Penn Match Co.* v. *Hapgood*, 141 Mass. 145. So the associates could have been held to full liability. *Johnson* v. *Corser*, 34 Minn. 355. See *Finnegan* v. *Noerenberg*, 52 Minn. 239, 243. But the vendor elected to look to the goods. And it could hardly have been maintained that title had passed out of the plaintiff, for the plaintiff's only intent was to pass title to the corporate unit. See *Byam* v. *Bickford*, 140 Mass. 31. Nor was there evidence of a new sale after the corporation was formed. See *Pennell* v. *Lothrop*, 191 Mass. 357, 360. Nor was the plaintiff in any way estopped from asserting title. So the court rightly allowed collateral attack, refusing to consider the naked assumption as a foundation of rights. See *The Detroit Schnetzen Bund* v. *The Detroit Agitations Verein*, 44 Mich. 313.

EMINENT DOMAIN — COMPENSATION — RIGHT TO ENJOIN NUISANCE UNTIL COMPENSATION IS MADE. — An owner of land abutting on the defendant's railway brought a bill to enjoin its use until compensation had been made for the injury to the plaintiff's property by reason of smoke, noise, etc. *Held*, that the plaintiff is not entitled to the injunction. *Hyde* v. *Minnesota, D. & P. Ry.*, 123 N. W. 849 (S. D.). See NOTES, p. 471.

EQUITABLE CONVERSION — ORDER OF COURT FOR SALE OF LAND. — An absolute order of court was given for the sale of land subject to an incumbrance. The owner died after the order had been issued but before the sale was actually made. *Held*, that his next of kin are entitled to the surplus. *In re Estate of Stinson*, [1910] 1 Ir. 13.

If an executor is unconditionally ordered to sell land, the beneficiaries no longer have any equitable right in the land; and their right descends as personalty to their next of kin. *Hyett* v. *Mekin*, 25 Ch. D. 735. But it has been held in partition proceedings that if a legal owner die after the court has ordered a sale, but before the proper time for the completion of the sale, the heirs take. *Biggert's Estate*, 20 Pa. St. 17. For an order to sell does not of itself divest legal title. Nor should equity treat the title as divested until after the time when the sale has been ordered to be made. Thereafter the owner's interest is regarded as personalty, equity regarding as done what ought to have been done. In the principal case, if the deceased is regarded as having no legal title at the time of his death either because the incumbrance was of the nature of a mortgage or because the time fixed for the sale was earlier than the owner's death, the decision is analogous to the cases stated above. The case may also be rested on an artificial rule that the court's order of sale works an immediate conversion. See *Burgess* v. *Booth*, [1908] 2 Ch. 648. To apply such a rule is more convenient but less logical than to analyze in each case the true nature of the rights of the deceased.

GENERAL AVERAGE — NATURE, CAUSE, AND MANNER OF SACRIFICE — EFFECT OF INHERENT VICE OF CARGO UPON THE RIGHT TO CONTRIBUTION. — A cargo of garbage tankage took fire by spontaneous combustion. The whole cargo of garbage tankage was destroyed in putting out the fire. The plaintiff insurance company had to indemnify the cargo owner and sued the vessel for a general average contribution. *Held*, that the plaintiff is not entitled to contribution. *Atlantic Mutual Ins. Co.* v. *Schooner W. J. Quillan*, 42 N. Y. L. J. 1821 (U. S. Dist. Ct., S. D. N. Y., Jan., 1910).

This reverses a former decision in the same case discussed in 22 HARV. L. REV. 452.

GIFTS — IMPERFECT GIFT — APPOINTMENT OF DONEE AS EXECUTRIX. — A testator promised that the plaintiff should have £2 a week during her life, and died without altering his intention. The will, of which the plaintiff was executrix, made no such provision. *Held*, that she has no claim against the estate. *In re Inness*, [1910] 1 Ch. 188.

Where an ineffectual release of a debt is made, a leading case has declared that the transaction is completed by the debtor becoming executor under the will of the releasor. *Strong* v. *Bird*, L. R. 18 Eq. 315. And a recent decision following the *dictum* of the earlier case reached the same result where execution was entrusted to one to whom an imperfect gift had been made. *Stewart* v. *McLaughlin*, [1908] 2 Ch. 251. See 22 HARV. L. REV. 60. These holdings must, however, be put upon different grounds. Apart from the question whether an unattested act should control testamentary disposition, it is proper for equity to decline to relieve against a release involved in law merely by the appointment of a debtor as executor, provided such release represents the intent of the testator. See 23 HARV. L. REV. 392. But for equity to act affirmatively and give to a donee an interest prevailing over the legal right of legatees is quite another matter. No decision found in this country hints at such a result. And for declining to extend the doctrine to cases in which the *res* is unspecified or a future transference is contemplated, the principal case is to be commended.

INDICTMENT AND INFORMATION — FINDING AND FILING INDICTMENT — PRESENCE OF EXPERT ACCOUNTANT IN GRAND JURY ROOM. — At the request of the district attorney, an expert accountant accompanied him into the grand jury room while that body was investigating the charge against the defendant. The accountant assisted the district attorney in examining witnesses, and asked a few technical questions. He did not attempt to influence the jurors. No prejudice to the defendant was shown to have resulted from his presence. *Held*, that the indictment must be quashed. *United States* v. *Heinze*, (Unreported) Circ. Ct., S. D. N. Y., Jan. 22, 1910.

A defendant prejudiced by the conduct of grand jury proceedings may have the indictment quashed. *United States* v. *Farrington*, 5 Fed. 343. But as to the presence of an unauthorized person not prejudicing the defendant's rights, the law is in confusion. Generally, a stenographer or bailiff is considered so far an automaton as to be unobjectionable. *State* v. *Bacon*, 77 Miss. 366; *United States* v. *Simmons*, 46 Fed. 65. *Contra*, *State* v. *Bowman*, 90 Me. 363. For the secrecy of the proceedings is said not to be for the defendant's benefit. See *Commonwealth* v. *Mead*, 12 Gray (Mass.) 167; *State* v. *Broughton*, 7 Ired. (N. C.) 96. The presence of a stranger who is an active factor in conducting the proceedings is always considered an error. By some courts it is deemed an error of substance; by others, merely an error of form. The principal case follows the weight of the federal decisions in holding that the defendant has received injury in law by the existence of an opportunity for an outsider to influence the grand jury. *United States* v. *Kilpatrick*, 16 Fed. 765; *United States* v. *Virginia-Carolina Chemical Co.*, 163 Fed. 66. A number of state courts think the defendant is sufficiently protected